MAT RASIP MANAP

v.

THE GOVERNMENT OF MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
AJAIB SINGH J
[CIVIL SUIT NO. P88 OF 1981]
8 MARCH 1982

ADMINISTRATIVE LAW: *Application to strike out statement of defence - Amended statement of claim and defence - Resignation of a public officer - Whether acceptance of verbal resignation bad and irregular - Absent from duty without lawful excuse.*

The plaintiff a Government servant was seconded to Bank Simpanan Nasional as a personnel and administrative manager. By an application dated 12 January 1978 he applied for 32 days leave to rest and recuperate. He included a proviso in the application stating that if his leave was not approved he would resign within 24 hours. However, his leave was approved and while still on leave he made a fresh application dated 22 February 1978 for a six months no-pay leave. The Public Service Department rejected the application for leave and terminated his services on 24 February 1978, purporting to accept the plaintiff's first application for leave wherein the resignation proviso was included. It was also alleged that between 16 February 1978 and 24 February 1978 plaintiff voluntarily saw the then Director of Public Service Department and verbally tendered his resignation which was verbally accepted.

The plaintiff claimed *inter alia* by way of amended statement of claim that the acceptance of his purported resignation was wrong, improper and without lawful cause and that he is still the employee of the defendant.

Subsequently the defendant filed an amended statement of defence. The plaintiff applied for an order that the statement of defence be struck out and his claim be allowed.

Held:

[1] The amended statement of defence disclosed no reasonable cause of defence and raised no triable issues. The allegation that the plaintiff was absent from duty without lawful excuse from 16 February 1978 is not an issue in this case.

[2] A public officer is required to tender his resignation in writing and the Director of Public Service Department is not empowered to accept verbal resignation which is bad and irregular and can have no effect.

[3] Defence ordered to be struck out and the claim for the declarations as prayed by the plaintiff is allowed with costs.

[Application allowed.]

Case referred to:
Lee Nyan Choi v. Voon Noon [1979] 2 MLJ 29

For the plaintiff - Wong An Lun
For the defendant - P.M. Mahalingam, Senior Federal Counsel

JUDGMENT

Ajaib Singh J:

This was an application by the plaintiff for an order that the statement of defence be struck out and that the plaintiff's claims be allowed. In view of the nature of the application and for easy reference I shall set out the amended statement of claim and the amended statement of defence.

Amended statement of claim

The plaintiff abovenamed states as follows:

(1) The plaintiff was employed by the defendant on 1 October 1970 and was seconded to the Bank Simpanan Nasional, Kuala Lumpur as a personal and administrative manager.

(2) The plaintiff on 12 January 1978 applied for 32 days leave in order to take time off to rest and recuperate. In the same application for leave and in considering the urgency to have the leave, the plaintiff inserted a proviso that in the event if the plaintiff's leave should not be approved, the plaintiff would resign within 24 hours upon being informed of the decision of not approving the leave thereof. The plaintiff shall refer to the documents at the trial of this case for their full terms and effects.

(3) The said application for leave as referred to in para. 2 hereof was approved.

(4) Subsequently on 22 February 1978 while still on leave the plaintiff made a fresh application for a 6-months no-pay leave in accordance with the General Orders for the purpose of resolving the plaintiff's personal problems and matters.

(5) The Public Service Department also known as Jabatan Perkhidmatan Awam rejected the fresh application of the plaintiff as referred to in para. 4 hereof by a letter dated 24 February 1978 and at the same time the said Public Service Department in the same letter terminated the service of the plaintiff therefrom purporting to accept the plaintiff's letter dated 12 January 1978 as referred to herein para. 2 as a letter of resignation.

(6) The plaintiff contends and shall contend that the said acceptance of the plaintiff's purported resignation of the plaintiff's appointment by the defendant is wrong, improper and without lawful cause.

(7) Since 24 February 1978 the plaintiff has been deprived of his salary, cost of living allowance and other emoluments which the plaintiff is and was entitled as an employee of the defendant.

WHEREFORE the plaintiff claims for:

(i) A declaration that the termination of the plaintiff's service as an employee of the defendant purported to be effected by the Public Service Department on 2 February 1978 is wrong, improper and without lawful cause and that the plaintiff is still the employee of the defendant.

(ii) An order that the defendant do pay the said plaintiff all arrears of pay, allowances and other emoluments due owing to the plaintiff as an employee of the defendant from the date of the purported termination of services.

(iia) An account of what is due to the plaintiff from the defendant in respect of his salary and all other emoluments as an employee of the defendant and an order for payment by the defendant to the plaintiff of any sum due upon taking such account.

(iii) Costs of this suit; and

(iv) Such further and other relief as the Honourable Court may deem fit and just.

Amended this 20 February 1981.

Amended statement of defence

(1) The defendant admits paragraphs 1,2 and 3 of the statement of claim.

(2) With regard to para. 4 of the statement of claim, the defendant overs that the plaintiff was absent from duty without lawful excuse from 16 February 1978.

(3) Between 16 February 1978 and 24 February 1978, the plaintiff voluntarily saw Encik Ahmad Tajuddin bin Muhd. Darus who was the then Director of Service, Public Service Department, U.M.B.C. Building, Kuala Lumpur. The plaintiff verbally tendered immediate resignation of his post to the said Tajuddin and the latter verbally accepted on behalf of the Government of Malaysia, the former's resignation of his post. Plaintiff agreed to pay one month's salary in lieu of notice.

(4) With regard to paragraphs 5, 6 and 7 of the statement of claim, the defendant avers that between 16 February 1978 and 24 February 1978 the said Tajuddin on behalf of the Government of Malaysia verbally accepted the verbal immediate resignation of the plaintiff from his post and the letter dated 24 February 1978 from the Public Service Department to the plaintiff was sent by mistake.

(5) Further or alternatively, it is abundantly clear from the plaintiff's conduct that he had voluntarily resigned from his post in late February 1978 and that the Government of Malaysia had accepted his resignation.

(6) The defendant prays that the plaintiff's claim be dismissed with cost.

(7) Save as hereinbefore expressly admitted, the defendant deny each and every allegation contained in the statement of claim as if the same were herein set forth seriatim and specifically traversed.

Dated this 11 May 1981.

In support of his application the plaintiff filed an affidavit wherein he more or less repeated what he had set out in his amended statement of claim. In addition he exhibited his application for 32 days leave and the letter of resignation dated 12 January 1978. He says that as his application for leave was approved the proviso regarding his resignation was no longer relevant or applicable. He refutes the defence allegation that he had resigned voluntarily and says that the condition precedent for the proviso to operate and his resignation becoming effective was disapproval of his application for leave.

The affidavit in reply is affirmed by Encik Ahmad Tajuddin bin Muhd. Darus who was the Director of Service, Public Service Department, during the relevant time. He says that the letter dated 24 February 1978 referred to by the plaintiff in his amended statement of claim and addressed to the plaintiff was sent by mistake and that "Between 16 February 1978 and 24 February 1978 the plaintiff voluntarily saw me. The plaintiff verbally tendered immediate resignation of his post to me and I, on behalf of the Government of Malaysia, accepted his resignation of his post. He agreed to pay one month's salary in lieu of notice." During the hearing of this application before me the letter of 24 February 1978 referred to by Encik Ahmad Tajuddin was tendered as an exhibit (Ex. B). This was in reply to the plaintiff's letter dated 22 February 1978 (Ex. A) applying for 6 months' no pay leave.

The plaintiff had to show strong grounds why the statement of defence should be struck out. No order to strike out a defence would be made if the defendant raises triable issues which ought to be heard and determined in the usual manner. On the power of the Court to deal with a matter summarily it was stated by Lee Hun Hoe CJ (Borneo) in the Federal Court case of *Lee Nyan Choi v. Voon Noon* [1979] 2 MLJ 29 as follows:

The power to dismiss an action summarily without permitting a party to proceed to trial is a drastic power and should be exercised with utmost caution. The power of summary procedure should only be resorted to in plain and obvious cases.

In the present application before me I agreed with learned Counsel for the plaintiff that the amended statement of defence disclosed no reasonable cause of defence and raised no triable issues. An officer in the public service is required to tender his resignation in writing. I find it difficult to accept the contention of the defence that a senior and high-ranking officer holding the post of Director of Service would accept a verbal resignation when he is not empowered to do so Under O. 61(a) of the General Orders Chapter A the resignation of a public officer is to be in writing - "notice of resignation must be submitted through the Head of the Department who will forward it to the Director General of the Public Service Department". Even if the Director of Service had accepted the verbal resignation of the plaintiff such acceptance would have been bad and irregular and can have no effect in view of O. 61 Chapter A. The allegation by the defence that the plaintiff was absent from duty without lawful excuse from 16 February 1978 is not in issue in this case. If there is any substance in this allegation the Government should have taken disciplinary action against the plaintiff. I suppose it is not too late to do so even now.

In all the circumstances therefore I was of the view that this was a "plain and obvious case" to resort to summary procedure and strike out the defence without trial. In the event therefore I allowed the application and ordered that the defence be struck out and the claim for the declarations as prayed by the plaintiff be allowed with costs.

Also found at [1982] CLJ 197